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was never an *operative fact* in itself but also that there was never any contract at all. See Corbin, *Conditions in the Law of Contract* (1919) 28 YALE LAW JOURNAL, 739, 764-68.

DAMAGES—CHARITABLE CORPORATIONS—DUTY TO PAY DAMAGES CAUSED BY THE NEGLIGENCE OF EMPLOYEE.—The defendant maintained a hospital having a regular schedule of charges, also taking free patients. The decedent, a pay patient known to be delirious, was left unguarded in a room with a window partly open. A nurse, after a short absence, found the window wide open and the patient dead upon the ground beneath. The decedent's administrator sued the defendant claiming that the latter was under a duty to pay damages because of negligence. *Held*, that he should recover. *Mulliner v. Evangelischer etc. Synod of North America* (1920, Minn.) 175 N. W. 699.

The court, after a review of the theories for holding or exempting a charitable corporation for the negligence of its employees, soundly held that the better reasoning and public policy required that they be held "liable." See in accord, *Roosen v. Peter Bent Brigham Hospital* (1920, Mass.) 126 N. E. 392; see (1918) 27 YALE LAW JOURNAL, 951. Hospitals conducted for gain are invariably held "liable." See *Meridian Sanatorium v. Scruggs* (1920, Miss.) 83 So. 532, 534. But charitable corporations were until lately held immune. See (1917) 26 YALE LAW JOURNAL, 791.

EVIDENCE—DYING DECLARATIONS—CREDIBILITY.—In a trial for murder the counsel for the state offered in evidence certain declarations of the decedent as dying declarations. The presiding justice directed the jury to retire while he heard the testimony of five witnesses as to the declarations of the decedent and the conditions under which they were made. Having decided that the declarations were admissible, the same witnesses were permitted to testify before the jury as to the condition of the decedent, his realization of impending death, and as to the declarations. *Held*, that such procedure was proper and that it remained for the jury to determine from all the circumstances the credibility of the declarations. *State v. Bordeleau* (1920, Me.) 108 Atl. 464.

The decision is in accord with the authorities. The court decides from all the circumstances under which the declarations were made, their contents, and form, whether or not they are admissible. The credibility of the declarations is, of course, a question for the jury and they may receive evidence of the situation in which the declarations were made. See 52 L. R. A. (N. S.) 152; 16 *ibid.*, 660; (1907) 16 YALE LAW JOURNAL, 432.

EVIDENCE—RES GESTAE—SPONTANEOUS EXCLAMATION THEORY.—One Yarborough was in charge of a turpentine camp composed almost wholly of negroes. One Bostick, known as "It," lived with a woman at a place conducted as a saloon. The woman was heard outside at night quarreling with someone, and Yarborough came up with a shot-gun and tried to take away this person's pistol. It went off and mortally wounded him. Within five minutes he said to the first white witness who came up, "Old It shot me." This was excluded, and the accused, Yarborough's cook, was convicted of murder, for he was said to have been chasing the woman to get back money of his which she had stolen. *Held*, that the conviction was error, because, *inter alia*, it was a *res gestae* statement and should have been admitted. *Johnson v. State* (1920, Tex. Cr. App.) 218 S. W. 496.

In the attempt to make more orderly the catchall of the exceptions to the hearsay rule, two theories have been advanced. The one is that the statement to be admissible must be substantially contemporaneous, and that the witness from his own observation of the circumstances shall be able in a measure to substantiate the truth of the declarant's statement. See Thayer, *Bedingfield's Case* (1881) 15 AM. L. REV. 71, 83. The other is the theory of Dean Wigmore,